

CAR Consultation
Securities and Markets Supervision Division
Central Bank of Ireland
Block D
Iveagh Court
Harcourt Road
Dublin 2

31 October 2013

Re: CP71 Consultation on Client Asset Regulations

Dear Sir/Madam

Please find the response of this firm to the CP71 on the draft Client Asset Regulations.

Yours faithfully



Brian Cahalin
Head of Compliance

Q1. Do you agree that the Client Asset Core Principles encompass the key fundamental principles in protecting and safeguarding client assets?

Yes, they do.

Q2. Do you agree with the proposed wider scope in respect of 'client funds'? If not, please explain why.

We agree with the principle of a broader definition of client funds, but believe that the definition is not broad enough. Client Assets should be defined as assets or financial instruments that are not beneficially owned by the firm, particularly where the assets and financial instruments belong to retail clients. We believe that full segregation and reconciliation should exist for all such assets. Recent Investment Firm failures highlighted the confusion among retail clients as to the status of unregulated investments held by regulated Firms

In addition we believe that all investment structures involving the assets of retail clients should have an audit requirement.

We would further add that there should be recognition within the regulations to acknowledge where a firm utilises the services of an independent third party custodian and administrator of client assets to provide direct confirmation of assets held and transactions undertaken.

Q3. Do you agree with the approach proposed to deal with instances where client funds are received but the firm has not identified the client or the necessary client paperwork is not complete? If not, please explain why.

No. We would disagree with the imposition of such a short absolute deadline of 2 days. The CAMP should assess the risks and issues relevant to the firm and set the internal guidelines for the return of funds and define the procedures to be applied when there are delays greater than those specified in the CAMP. In the event that an absolute deadline is seen as necessary, then it should be of the order of 10 days.

Q4. Do you agree that the Regulations should apply to funds that have been lodged into a Collection Account? If not, please explain why.

Yes

Q5. Do you agree for the purpose of segregating client assets and determining which clients are impacted if a third party fails, a firm should be able to identify where each individual client's assets are held? If not please explain why.

Yes

Q6. Do you agree that a client's required margin should be better protected under the client asset regime? If not, please explain why. If you agree, please outline how this could be best achieved.

N/A

Q7. Do you agree that the records should be retained for six years? If not please explain why.

Yes

Q8. Do you agree with the new approach proposed in respect of Facilities Letters and Confirmations? If not please explain why.

Yes

Q9. Do you agree that in the interest of protecting client assets, where a third party has not designated a client asset account/Collection Account as requested by the firm, these client assets should be withdrawn from the third party without delay? If not, please explain why.

No, we believe this additional step should not be required as the firm will have obtained confirmation in advance that the account is to be designated as a client asset account. At a practical level, the firm will have obtained a

letter confirming the specific account will comply with the client asset requirements immediately prior to lodging funds to the account in question. Verifying this, within 1 business day every single time is excessive and will generate a significant amount of paperwork with limited added value to the client protection process. A more structured approach would be to require evidence that the first statement/ confirmation be checked to ensure the account is appropriately designated. This will have to occur within one month.

Q10. Do you agree with the approach for reconciling client asset accounts that hold client funds? If not please explain why. If there are other types of accounts that do not readily conform to the frequency of reconciliations cited above, please provide details of same.

Yes

Q11. Do you agree that client financial instruments should be reconciled at least monthly or should the reconciliation be performed in a lesser period? If so, please explain why?

Yes

Q12. Do you agree with the time allocation of ten days to complete these reconciliations or should it be performed in a lesser time period? If so, please explain why.

Yes

Q13 Do you agree that an investment firm should immediately make good or provide the equivalent of any shortfall in client financial instruments? If not, please explain why.

Yes

Q14. Do you agree that a Collection Account should be reconciled each time a transaction occurs on that account? If not, please explain why.

No. The reconciliation of collection accounts should take place at such intervals as is deemed appropriate for the Collective Investment Scheme in question based on the frequency of dealing and the volume of transaction over the accounts, but in any event at least monthly. This could be agreed by the Board of the Collective Scheme associated with the collection account. A timescale of one business day for the completion of a reconciliation based on a defined frequency, should ensure that the appropriate frequency is selected.

Q15. Do you agree that it is appropriate for a firm to report material reconciling items with the level of materiality determined by the firm? If not, please explain why.

Yes

Q16. Do you agree with the components of an investment firm's Client Money Requirement and Client Money Resource? If not, please explain why.

Yes

Q17. Do you agree with the Central Bank's approach to the computation of the Client Money Requirement and Client Money Resource for FSPs? If not, please explain why.

Yes

Q18. Do you agree that a firm's Client Money Resource should only contain what it is required to hold for its clients on a given day? If not, please explain why.

No. Firms should have the option of retaining a buffer to reduce the number of adjustments and transfers and allow for a margin of error. A hybrid solution would be for the Firm to retain a 'buffer' client asset account, which could be held in separately designated account but which could be incorporated into the calculations.

Q19. Do you agree that the reporting of an investment firm's Client Money Resource shortfall should be investment firm specific based on its materiality appetite? If not please explain why.

Yes

Q20. Do you agree that a statement should be provided on an annual basis or should it provided on a more regular basis?

Yes

Q21. Do you agree that a) to g) above will provide clients with sufficient information regarding their holdings? If not please explain why, providing details of additional information which should be included.

Yes

Q22. Do you agree that a Fund Service Provider should issue a receipt to the client? If not, please explain why and put forward an alternative approach that will provide confirmation to a client that his/her money is deposited in a Collection Account.

No. The requirement to issue cash receipts in this circumstance will potentially generate a large volume of paperwork which will have the potential to confuse. Contract notes will normally issue to investors from the administrator within a short period of time and issuing additional documentation in advance of this will be of limited use. Transfer into collection accounts will normally be made by SWIFT transfer on the express instruction of the investor. Sending a manual confirmation will not add to the actual or perceived security of their investment.

While this concept may be applicable to a retail broker based environment, it should not be extended to all FSPs.

Q23 Do you agree that an investment firm should seek prior written consent from its client in respect of the circumstances listed in a) to h) above? If not please explain why, providing details of additional circumstances which should be included

Yes

Q24. Do you agree that a FSP should obtain prior written consent from a client in respect of the circumstances listed in a) to c) above and with the medium used to obtain this consent? If not please explain why, providing details of additional circumstances which should be included.

No. The definition of FSP includes administrators as well as Investment Managers and Collective Investment Schemes. The regulation is attempting to impose a relationship between administrators/custodians and underlying investors, which does not exist. The 'client' has a relationship with the Collective Investment Scheme and the nature of the arrangements in relation to client money should be handled in the documentation establishing this relationship and not by way of separate communication from the FSP.

Q25. Do you agree that the CAKID will better inform the client with a greater understanding providing information in clear plain English that will equip the client to comprehend where and how his/her assets are held when deposited with a firm? If not please explain why.

While in principle the CAKID may provide the client with a greater understanding of the status of how their assets are held, the application of the regulation to all FSPs will generate confusion and unnecessary paperwork. CAKIDs should only apply to parties with a direct contractual relationship with the client and not their service providers. This Firm is of the opinion that a separate CAKID in respect of a regulated investment scheme will not add to a clients' understanding of the protection applicable to them. Given the level of regulation and fiduciary oversight within a fund with an Irish FSP, we do not believe that the CAKID should apply to FSPs as all relevant disclosures should be made in the fund documentation. The imposition of the requirements on all FSPs will potentially make Ireland an uncompetitive location to domicile funds.

Q26. Do you agree with the need to provide the CAKID to both existing and new clients distinguishing clients of an investment firm and a Fund Service Provider as outlined above? If not please explain why.

Yes, but subject to our view that the CAKID should not apply to FSPs

Q27. Do you agree with appointing a person to the role of CAOR which will be a pre-approved controlled function? If not, please explain why?

Yes

Q28. Do you agree with the responsibilities of the Client Asset Oversight Officer as provided for in a) to g) above? If not, please explain why, providing details of additional responsibilities which should be included.

Yes

Q29. Do you agree with the purpose of the CAMP and the minimum that should be included in this document? If not, please explain why, providing details of additional records which should be included.

Yes

Q30. Do you agree that Regulation 8.(3) provides for what should be included in a CAE? If not please explain why.

No. We believe the matters to be reported on should be more specific. We would be concerned that the regulation as drafted will lead to additional cost to Investment Firms to report on matters which are highly subjective that will be challenging for auditors to provide definitive assurance on and which will not add significantly to the protection of clients

Q31. Should this review be carried out more frequent than annually? If so, please explain why.

No

Q32. Do you agree with the type of assessment that should be carried out on the firm's initial CAMP by an independent external expert?

No. The imposition of an additional review by an 'expert' other than the Firm's Auditor on Firms that have been meeting the Client Asset Requirements for a number of years and have subject to bi-annual audits is unreasonable. The Board have always had responsibility for this matters and the CAMP will be approved by the Board. The review of compliance with the regulations under regulation 8.3 should suffice. An independent assessment might be relevant to a newly licensed entity, though the requirement that it be completed by an 'independent expert' is questionable.

Q33. Do you agree that 3 months is sufficient time for a firm to obtain an assessment of the CAMP from an independent external expert? If not, please explain why.

No. As noted above, we do not believe there should be a requirement to complete such an assessment on existing Firms. In respect of new Firms it is a reasonable timeframe